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Supreme Court of the United States

OCTOBER TERM, 1942

No. _____

SAMUEL C. PANDOLFO,

Petitioner

vs.

UNITED STATES OF AMERICA

Petition for Writ of Certiorari to Circuit Court of Appeals
for the Tenth Circuit.

To: The Honorable Harlan Fiske Stone, Chief Justice of the Supreme Court of the United States, and to the Associate Justices of the Supreme Court of the United States:
Your Petitioner respectfully shows:

I.

That the United States Circuit Court of Appeals for the Tenth Circuit on May 18th, 1942, rendered a decision affirming a conviction of Petitioner on charges of violating the Mail Fraud Act (Tr 702) Title 18, Section 338, U. S. C. A.) and on June 16th, 1942 denied Petitioner's motion for rehearing, (Tr 703) the Honorable Orie L. Phillips, Senior Circuit Judge, nevertheless dissenting from the majority opinion and being of the opinion that the judgment of conviction should be reversed and a new trial granted Petitioner. (Tr 704).

Petitioner was convicted on Counts one (1) to eight (8) inclusive of an Indictment charging Petitioner with having

devised a scheme and artifice to defraud numerous persons named in the sale of stock in Old Line Insurance Shares Corporation and with having used the mails in the execution thereof.

The Indictment charged among other things, that certain securities owned by the company were carried on its books and in financial statements at far in excess of their true market value, and that these were mailed to prospective victims by circulars, letters, financial statements and in other advertising matter to induce investments.

Among others, the Petitioner assigned as error to the Circuit Court, the following:

"The Court erred in admitting over defendant's objection, in connection with the testimony of the witness Fisher, evidence for the purpose of showing the market value of certain securities, consisting of evidence purely hearsay in character, improper and incompetent, for the purpose of establishing market value and in refusing to withdraw such evidence from the jury, all to defendant's prejudice." (Tr 70).

This Petitioner would show this Court that the learned Tenth Circuit Court erred in holding said evidence harmless and in failing to reverse and remand the case because of the improper evidence of the witness Fisher aforesaid.

**Reasons Relied Upon For Allowance
Of The Writ**

I.

The decision of the Circuit Court in the case holding the admitted incompetent and hearsay evidence was harmless, is, under the circumstances disclosed by the record, contrary to a former decision of said Circuit Court in the case of Coulston vs. United States, 51 Fed. (2d) 178, and is contrary to the rule announced in the Eighth Circuit in Miller vs. Oklahoma, 149 Fed. 330, and is contrary to the rule announced by the Supreme Court of the United States in Delaney vs. United States, 263 U. S. 586, 44 Sup. Ct. Rep. 206.

II.

The decision of the Honorable Circuit Court in holding the